

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

THERESA BROOKE,  
Plaintiff,

v.

RIHH LP,  
Defendant.

Case No. 19-cv-06852-SI

**ORDER STRIKING PLAINTIFF'S  
UNRUH ACT CLAIM**

Re: Dkt. No. 15

The Court is in receipt of plaintiff Theresa Brooke's First Amended Complaint ("FAC") (Dkt. No. 15). Plaintiff's FAC again alleges an Unruh Act claim, despite the Court's previous dismissal of that claim with prejudice.

The Court may strike portions of a pleading that are precluded by a previous order. *Cleverley v. Ballantyne*, No. 2:12-cv-00444, 2014 U.S. Dist. LEXIS 9592, at \*9 (D. Nev. Jan 24, 2014) (striking paragraphs of a pleading barred by a prior court order). "Plaintiff risks sanctions by repleading claims previously dismissed with prejudice." *Franconero v. UMG Recordings Inc.*, No. 12-cv-03382, 2014 U.S. Dist. LEXIS 201091, at \*12 (C.D. Cal. Feb. 13, 2014); *see also Destfino v. Reiswig*, 630 F.3d 952, 959 (9th Cir. 2011) (affirming the court's inherent power to control its docket by dismissing a complaint for failure to comply with instructions provided on leave to amend).

Plaintiff need not replead the Unruh Act claim to preserve it for appeal. *See Lacey v. Maricopa County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc) ("For claims dismissed with prejudice and without leave to amend, we will not require that they be repled in a subsequent amended complaint to preserve them for appeal.").

However, even if plaintiff were granted leave to replead the Unruh Act claim, plaintiff's new facts—namely, defendant's rebranding and plaintiff's new office in San Jose, California—still fail

1 to show the alleged injury occurred in California. FAC ¶ 1 and footnote 2. The Unruh Act only  
2 applies to “persons within the jurisdiction of [California].” Cal. Civ. Code §§ 51(b), (f). Plaintiff  
3 is a citizen of Arizona and the alleged harm occurred in Arizona where plaintiff viewed defendant’s  
4 website, so plaintiff does not have standing to bring an Unruh Act claim. Plaintiff was only granted  
5 leave to amend her Americans with Disabilities Act (ADA) claim.

6 For the foregoing reasons and for good cause shown, the Court orders plaintiff’s Unruh Act  
7 claim STRICKEN from plaintiff’s FAC.

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9 **IT IS SO ORDERED.**

10 Dated: March 10, 2020



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12 SUSAN ILLSTON  
13 United States District Judge  
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